

REMARKS

Claims 1 and 2 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over United States Patent No. 6,397,841 to Kenyon in view of United States Publication No. 2003/0070544 to Mulvaney. Reconsideration and withdrawal of this rejection is requested.

Kenyon discloses a humidified gases delivery system with a housing, a pressurised gases supply in the housing, a pressurised gases outlet in the housing in fluid connection with the pressurised gases supply and adapted to make a fluid connection with the inlet of a humidifier to provide gases flow to the humidifier.

Mulvaney discloses a fan forced air filtration system with an air filter by and an electric blower assembly like an HVAC system, a vacuum cleaner and so on. The fan forced air filtration system includes a casing including a housed filter to filter air drawn in by the system, a blower assembly, a blower controller and an air outlet.

Amended claim 1 specifies “a removable filter in said inlet of said humidifier and downstream of said pressurised gases supply, wherein said filter is positioned such that said filter can filter pressurised gases entering said humidifier”. Neither Kenyon nor Mulvaney discloses or suggests such a removable filter.

The Examiner has admitted that Kenyon does not disclose a humidified gases delivery with a removable filter. Kenyon does not disclose a filter or any other structure that allows a filter to be placed in the inlet of the humidifier and positioned downstream to the pressurised gases supply to filter pressurised gases.

Mulvaney, however, does not solve the shortcomings in Kenyon. Paragraph [0025] of Mulvaney does not state the filter is removable. FIG. 2 of Mulvaney is an exploded view of the

fan forced air system. This a common engineering drawing to show the components and their relationship with respect to each other. This does not mean that the filter in Mulvaney is removable. The description of Mulvaney does not say the filter 44 is removable.

Further, Mulvaney discloses a filter 44 that is positioned upstream to the blower assembly 36 (i.e. the gases supply), as seen in FIG. 4 of Mulvaney. The filter 44 of Mulvaney is positioned in the air intake path 60, which is upstream or before the blower assembly 36. Mulvaney does not disclose or suggest a removable filter positioned downstream to the pressurised gases supply.

Claim 1 further specifies that “said filter is positioned such that said filter can filter pressurised gases entering said humidifier”. Neither Kenyon nor Mulvaney disclose a removable filter wherein the filter is positioned in such a way that it can filter pressurised gases entering the humidifier.

Mulvaney does not disclose or suggest a filter positioned such that it can filter pressurised gases entering the humidifier. The filter 44 of Mulvaney filters air drawn from the surroundings. Applicants submit that it would not be obvious to one of ordinary skill in the art to reposition the filter 44 of Mulvaney to for filtering pressurised gases. Mulvaney is silent to the feature of the filter filtering pressurised gases.

Applicants further submit that claim 1 is not rendered obvious because a person of ordinary skill would not combine the teachings of Kenyon and Mulvaney because the devices described therein are from varying fields. Kenyon discloses an apparatus to deliver humidified gases for medical procedures. Mulvaney discloses a fan forced air system for HVAC systems, house humidifiers, vacuum cleaners and the like. Kenyon is related to the healthcare field, while Mulvaney is for industrial air filtration. It would not be obvious to combine an industrial air

filter with a healthcare device due to the size of the industrial filter and because healthcare products are regulated with strict rules. A person of ordinary skill in the art of healthcare devices would not look at a device from an industrial fan forced air filtration system because both devices are for completely different uses. Mulvaney describes a filter suitable for and similar to HVAC systems. Such a filter is not suitable for use in pressurised CPAP system.

Therefore, Applicant submits that claim 1 is not rendered obvious by Kenyon in view of Mulvaney. Reconsideration and allowance is requested.

Claim 2 is dependent upon claim 1 which Applicant submits is allowable. Therefore, Applicants submit that claim 2 is allowable. Reconsideration and allowance is requested.

Claims 3 and 4 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Kenyon in view of Mulvaney and further in view of United States Patent No. 7,096,864 to Mayer. Claim 5 was rejected under 35 U.S.C. §103 as allegedly being unpatentable over Kenyon in view of Mulvaney and further in view of United States Patent No. 6,953,354 to Edirisuriya et al. Claims 3-5 are dependent upon claim 1 which Applicant submits is allowable. Therefore, Applicants submit that claims 3-5 are allowable. Reconsideration and allowance is requested.

Furthermore, with regard to the rejection of claim 5, Edirisuriya and the present application were and are commonly owned and this overcomes Edirisuriya as a reference.

Therefore, Applicants state that:

**SERIAL NO. 10/566,109 AND UNITED STATES PATENT NO. 6,953,354 TO
EDIRISURIYA WERE, AT THE TIME THE INVENTION OF SERIAL NO. 10/566,109
WAS MADE, OWNED BY FISHER & PAYKEL HEALTHCARE LIMITED.**

Applicants confirm that Eridisuriya was not published in any country a year prior to the international filing date of the present application.

Therefore, Eridisuriya is not available as prior art under 35 U.S.C. §102(e)/103.

Reconsideration and withdrawal of this rejection is requested.

Claims 6 and 12 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over United States Patent No. 6,398,197 to Dickinson in view of Mulvaney. Reconsideration and withdrawal of this rejection is requested.

Dickinson discloses a humidifier chamber with a container, heat conductive base, an inlet and an outlet. Dickinson does not disclose a filter in the humidifier chamber container.

Mulvaney discloses a fan forced air filtration system like an HVAC system, vacuum cleaner, etc. The fan forced air filtration system includes a casing including a housed filter to filter air drawn in by the system, a blower assembly, a blower controller and an air outlet.

Amended claim 6 specifies “a removable filter in, on or over said inlet to said container” Dickinson and Mulvaney do not disclose or suggest such a removable filter. Therefore, Applicants submit that claim 6 is not rendered obvious by Dickinson and Mulvaney.

As discussed above with regard to claim 1, paragraph [0025] of Mulvaney does not state the filter is removable and FIG. 2 of Mulvaney is an exploded view of the fan forced air system which is a common engineering drawing to show the components and their relationship with respect to each other. This does not mean that the filter in Mulvaney is removable. The description of Mulvaney does not say the filter 44 is removable.

Amended claim 6 also specifies that “a removable filter . . . downstream to any pressurised gases supply”. Dickinson and Mulvaney do not disclose or suggest such a removable

filter. Mulvaney discloses a filter 44 that is positioned upstream to the blower assembly 36 (i.e. the gases supply), as seen in FIG. 4 of Mulvaney. The filter 44 of Mulvaney is positioned in the air intake path 60, that is upstream or before the blower assembly 36. Mulvaney does not disclose or suggest a removable filter positioned downstream to the pressurised gases supply.

Amended claim 6 further specifies “said filter positioned such that said filter can filter any pressurised gases to said container”. Dickinson and Mulvaney do not disclose or suggest such a removable filter.

Mulvaney does not disclose a filter positioned such that it can filter pressurised gases. The filter 44 of Mulvaney filters air drawn from the surroundings. Mulvaney does not disclose or suggest a filter that filters pressurised gases. It is not obvious to a person of ordinary skill in the art to reposition the filter 44 of Mulvaney for filtering pressurised gases.

In addition, combining the teaching of Mulvaney and Dickinson will not result in the claimed invention since they do not disclose a removable filter that is placed in, on or over the inlet of a container and downstream to any pressurised gases supply, the filter positioned such that it can filter any pressurised gases to the container.

Applicants further submit that claim 6 is not rendered obvious because a person of ordinary skill would not combine the teachings of Dickinson and Mulvaney because the devices described therein are from different fields. Dickinson is related to water chambers and humidification chambers for CPAP machines. Mulvaney is related to fan forced air filtration systems like in HVAC and vacuum cleaners. Dickinson is related to the healthcare field, while Mulvaney is related to industrial air filtration. Applicants submit that it would not be obvious to one of ordinary skill in the art to combine an industrial air filter with a healthcare device due to

the size of the industrial filter and because healthcare products are regulated with strict rules. A person of ordinary skill in the art of healthcare devices would not look at a device from an industrial fan forced air filtration system because both devices are for completely different uses. Mulvaney describes a filter suitable for and similar to HVAC systems. Such a filter is not suitable for use in a healthcare humidifier that receives pressurised breathing gases.

Therefore, Applicant submits that claim 6 is not rendered obvious by Dickinson in view of Mulvaney. Reconsideration and allowance is requested.

Claim 12 is dependent upon claim 6 which Applicant submits is allowable. Therefore, Applicants submit that claim 12 is allowable. Reconsideration and allowance is requested.

Claims 7-11 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Dickinson in view of Mulvaney, and further in view of DE 102 26 160 to Hoffrichter in view of Kenyon. Claims 7-11 are dependent upon claim 6 which Applicant submits is allowable. Therefore, Applicants submit that claims 7-11 are allowable. Reconsideration and allowance is requested.

Claims 1-4, 6 and 7 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over WO 2004/026382 to Kramer in view of Mulvaney. Applicants' attorney, Linda Palomar, discussed this rejection with the Examiner on November 19, 2009 and November 20, 2009. Applicants' attorney noted that the Examiner had previously required a Terminal Disclaimer, along with the other statements, in order to overcome Kramer as prior art, and the Examiner advised that the Terminal Disclaimer was not accepted because the Terminal Disclaimer erroneously listed the publication number instead of the application number of Kramer. During the conversation, Applicants' attorney and the Examiner discussed that the Terminal Disclaimer

was not necessary because Kramer and the present application are commonly owned and this overcomes Kramer as a reference. Therefore, Applicants state that:

SERIAL NO. 10/566,109 AND WO 2004/026382 TO KRAMER WERE, AT THE TIME THE INVENTION OF SERIAL NO. 10/566,109 WAS MADE, OWNED BY FISHER & PAYKEL HEALTHCARE LIMITED.

Applicants confirm that Kramer was not published in any country a year prior to the international filing date of the present application.

Therefore, Kramer is not available as prior art under 35 U.S.C. §102(e)/103.

Reconsideration and withdrawal of this rejection is requested.

A Petition for a Two-Month Extension of Time is concurrently submitted herewith to extend the date for response up to and including April 9, 2010.

Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

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